



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1259]

Certain Toner Supply Containers and Components Thereof (I)

Notice of Commission Determination to Review in Part an Initial Determination Granting Complainants' Motion for Summary Determination of Violations of Section 337; Schedule for Filing Written Submissions on Remedy, Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part an initial determination (“ID”) issued by the presiding chief administrative law judge (“ALJ”) granting summary determination of violations of section 337. The Commission requests briefing from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-3228. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: On April 13, 2021, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based on a complaint filed by Canon Inc. of Tokyo, Japan; Canon U.S.A., Inc. of Melville, New York; and Canon Virginia, Inc. of Newport News, Virginia (collectively, “Complainants”). See 86 FR 19284-86. The complaint, as supplemented, alleges a violation

of section 337 based upon the importation into the United States, sale for importation, or sale after importation into the United States of certain toner supply containers and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 10,209,667 (“the ’667 patent”); 10,289,060 (“the ’060 patent”); 10,289,061 (“the ’061 patent”); 10,295,957 (“the ’957 patent”); 10,488,814 (“the ’814 patent”); 10,496,032 (“the ’032 patent”); 10,496,033 (“the ’033 patent”); 10,514,654 (“the ’654 patent”); 10,520,881 (“the ’881 patent”); 10,520,882 (“the ’882 patent”); 8,565,649; 9,354,551; and 9,753,402. *Id.* The complaint further alleges that a domestic industry exists. *Id.*

The Commission instituted two separate investigations based on the complaint and defined the scope of the present investigation as whether there is a violation of section 337 in the importation, sale for importation, or sale within the United States after importation of toner supply containers and components thereof by reason of infringement of certain claims the ’667 patent, the ’060 patent, the ’061 patent, the ’957 patent, the ’814 patent, the ’032 patent, the ’033 patent, the ’654 patent, the ’881 patent, and the ’882 patent (collective, “the Asserted Patents”). *Id.*

The notice of investigation (“NOI”) names twenty-six respondents, including twenty-two later found in default: (1) Sichuan XingDian Technology Co., Ltd. (“Sichuan XingDian”) of Sichuan, China; (2) Sichuan Wiztoner Technology Co., Ltd. (“Sichuan Wiztoner”) of Sichuan, China; (3) Copier Repair Specialists, Inc. (“Copier Repair Specialists”) of Lewisville, Texas; (4) Digital Marketing Corporation d/b/a Digital Buyer Marketing Company (“Digital Buyer”) of Los Angeles, California; (5) Ink Technologies Printer Supplies, LLC (“Ink Tech”) of Dayton, Ohio; (6) Kuhlmann Enterprises, Inc. d/b/a Precision Roller (“Precision Roller”) of Phoenix, Arizona; (7) NAR Cartridges of Burlingame, California; (8) Zhuhai Henyun Image Co., Ltd. (“Zhuhai Henyun”) of Zhuhai, China; (9) Zinyaw LLC d/b/a TonerPirate.com and Supply District (“Zinyaw”) of Houston, Texas; (10) Do It Wiser, Inc. d/b/a Image Toner (“Do It Wiser”) of Wilmington, Delaware; (11) MITOCOLOR INC. (“MITOCOLOR”) of Rowland Heights,

California; (12) Anhuiyatengshangmaoyouxiangongsi (“Yatengshang”) of Ganyuqu, China; (13) ChengDuXiangChangNanShiYouSheBeiYouXianGongSi (“ChengDuXiang”) of SiChuanSheng, China; (14) Hefeierlandianzishangwuyouxiangongsi (“Erlandianzishang”) of Chengdushi, China; (15) Xianshi yanliangqu canqiubaihuodianshanghang (“CJ-us”) of Shanxisheng, China; (16) Ninestar Corporation of Guangdong, China; (17) Ninestar Image Tech Limited (“Ninestar Image”) of Guangdong, China; (18) Ninestar Technology Company, Ltd. (“Ninestar Tech”) of Chino, California (where Ninestar Corporation, Ninestar Image, and Ninestar Tech are collectively, “Ninestar Respondents”); (19) Static Control Components, Inc. (“Static Control”) of Sanford, North Carolina; (20) Easy Group, LLC (“Easy Group”) of Irwindale, California, LD Products, Inc. (“LD Products”) of Long Beach, California; and (22) The Supplies Guys, Inc. (“Supplies Guys”) of Lancaster, Pennsylvania; (collectively, “Defaulting Respondents”). *Id.* The NOI also includes the following respondents who were previously terminated from the investigation: General Plastic Industrial Co. Ltd. (“General Plastic”) of Taichung, Taiwan; Katun Corporation (“Katun”) of Minneapolis, Minnesota; Sun Data Supply, Inc. (“Sun Data Supply”) of Los Angeles, California; and Shenzhenshi Keluodeng Kejiyouxiangognsi (“KenoGen”) of Guangdong, China. *Id.* The Office of Unfair Import Investigations (“OUII”) is also a party to the investigation. *Id.*

The complaint and NOI were later amended to correct the name of originally-identified respondent, Do It Wiser, LLC d/b/a Image Toner, to Do It Wiser, Inc. d/b/a Image Toner. Order No. 5 (May 13, 2021), *unreviewed by* 86 FR 29292-93 (June 1, 2021).

Respondents Ninestar Respondents, Static Control, Easy Group, LD Products, and Supplies Guys were previously found in default. Order No. 7 (June 22, 2021), *unreviewed by* Notice (July 6, 2021). In addition, respondents Sichuan XingDian, Sichuan Wiztoner, Copier Repair Specialists, Digital Buyer, Ink Tech, Precision Roller, NAR Cartridges, Zhuhai Henyun, Zinyaw, Do It Wiser, MITOCOLOR, Yatengshang, ChengDuXiang, Erlandianzishang, and CJ-

us were previously found in default. Order No. 18 (Sept. 28, 2021), *unreviewed by* Notice (Oct. 27, 2021).

Respondents General Plastic, Katun, and Sun Data Supply were previously terminated from the investigation pursuant to consent order stipulations. Order No. 10 (July 1, 2021), *unreviewed by* Notice (July 19, 2021). Respondent KenoGen was previously terminated from the investigation based on partial withdrawal of the complaint. Order No. 13, *unreviewed by* Notice (Aug. 25, 2021).

The investigation was previously terminated as to certain claims of the Asserted Patents. Order No. 11, *unreviewed by* Notice (Aug. 25, 2021).

On October 1, 2021, Canon filed a motion seeking summary determination that the Defaulting Respondents have violated section 337 and requesting that the ALJ recommend that the Commission issue a general exclusion order (“GEO”) and cease and desist orders (“CDOs”) against certain respondents, and set a 100 percent bond for any importations of infringing goods during the period of Presidential review. On October 12, 2021, OUII filed a response supporting Canon’s motion and requested remedial relief. None of the Defaulting Respondents filed a response to Canon’s motion.

On February 11, 2022, the ALJ issued the subject ID granting Canon’s motion and finding violations of section 337 by the Defaulting Respondents. Specifically, the ID finds that: (i) the Commission has subject matter, personal, and in rem jurisdiction in this investigation, ID at 26-27; (ii) Canon has standing to assert the Asserted Patents, *id.* at 27; (iii) Canon has satisfied the importation requirement as to all Defaulting Respondents, *id.* at 28-51; (iv) the accused products practice claim 1 of the ’667 patent; claim 1 of the ’060 patent; claim 1 of the ’061 patent; claim 1 of the ’957 patent; claims 1 and 12 of the ’814 patent; claims 50, 58, and 61 of the ’032 patent; claims 1 and 13 of the ’033 patent; claims 46 and 50 of the ’654 patent; claims 1, 10, and 13 of the ’881 patent; and claims 1 and 8 of the ’882 patent, *id.* at 54-61; (v) Canon has satisfied the technical prong of the DI requirement with respect to the Asserted Patents, *id.* at 61-

69; (vi) Canon has satisfied the economic prong of the DI requirement with respect to the Asserted Patents, *id.* at 69-81; and (vii) no claim of the Asserted Patents has been shown invalid, *id.* at 82. The ALJ recommended that the Commission: (i) issue a GEO, (ii) issue CDOs against respondents Ninestar Tech, Static Control, Copier Repair Specialists, Digital Buyer, Do It Wiser, Easy Group, Ink Tech, Precision Roller, LD Products, NAR Cartridges, Supplies Guys, MITOCOLOR, Zinyaw, Ninestar Corporation, Ninestar Image, Sichuan XingDian, Sichuan Wiztoner, Yatengshang, ChengDuXiang, and Erlandianzishang, and (iii) set a 100 percent bond for any importations of infringing products during the period of Presidential review. *Id.* at 84-102.

No party petitioned for review of the ID.

The Commission did not receive any submissions on the public interest from the parties pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)). The Commission received one submission on the public interest from a member of the public in response to the Commission's *Federal Register* notice. 87 FR 16230-31 (March 22, 2022).

Having reviewed the record in this investigation, including the subject ID, the Commission has determined to review the subject ID in part. Specifically, the Commission has determined to review the ID's findings with respect to whether terminated respondent Sun Data Supply has satisfied the importation requirement. The Commission has also determined to review the ID's analysis of the economic prong of the domestic industry requirement. The Commission has determined not to review the remainder of the ID.

In connection with the final disposition of this investigation, the statute authorizes issuance of: (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks

exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-10 (December 1994).

The statute requires the Commission to consider the effects of any remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on: (1) the public health and welfare; (2) competitive conditions in the U.S. economy; (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation; and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. See Presidential Memorandum of July 21, 2005. 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: The parties, interested government agencies, and any other interested parties are invited to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should include views on the recommended determination by the CALJ on remedy and bonding.

In their initial written submissions, Canon and OUII are requested to submit proposed remedial orders for the Commission's consideration. Canon is further requested to identify the dates the Asserted Patents expire, to provide the HTSUS subheadings under which the subject

articles are imported, and to supply identification information for all known importers of the subject articles.

Initial written submissions, including proposed remedial orders, must be filed no later than close of business on **May 13, 2022**. Reply submissions must be filed no later than the close of business on **May 20, 2022**. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (Inv. No. 337-TA-1259) in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed with the Commission and served on any parties to the investigation within two business days of any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or

maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on April 29, 2022.

While temporary remote operating procedures are in place in response to COVID-19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules 201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), the Commission orders that the complainant complete service for any party/parties without a method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (EDIS).

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

Issued: April 29, 2022.

Katherine Hiner,
Acting Secretary to the Commission.

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